IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ESI ACT NO.3/2001

Employees State Insurance Corporation,
through its Regional Director,
Defence Colony,
Porvorim, Goa. ..... Appellant.

V/s

Sandhya Cafe,
Dourado Building,
Opp. Fish Market,
Vasco da Gama, Goa. ..... Respondent.

Mrs. A. A. Agni, Advocate for the appellant.

Mr. E.O. Mendes, Advocate for the respondent.

CORAM : S.K. SHAH, J.

DATE : 21ST FEBRUARY, 2007.

ORAL JUDGMENT :

Having heard the Counsel on both sides, it appears that the matter is required to be remanded to the E.S.I. Court for considering the specific averment made in the application itself by the respondent to the effect that the cooking gas is used by the applicant in the preparation of food in the hotel, but it is not covered under the definition of `power' given

in the E.S.I. Act and decide whether the use of cooking gas would be covered under that definition.

2. A perusal of the order passed by the E.S.I. Court indicated that the E.S.I. Court has proceeded on the footing that it was proved that the cooking gas was used for preparation of food in the establishment of the respondent. However, after the order was passed by the Regional Director under Section 45-A of the Act, an application under Sections 75 and 77 of the E.S.I. Act 1948 was made, in which there is an averment to the following effect :

> "It is further submitted that although cooking gas is used by the applicant in the preparation of food in the hotel, it is not power as defined in the E.S.I. Act."

This averment in the application has not at all been considered by the E.S.I. Court while recording the finding that the appellants have failed to establish that the respondents were using the cooking gas in their establishment for preparation of food in the hotel. Consequently, the E.S.I. Court has also not recorded its finding as to whether the use of cooking gas in preparation of food in the establishment of the respondent was covered in the definition of `power' given under the E.S.I. Act.

3. It is, therefore, necessary to remand the matter to the E.S.I. Court, South Goa, at Margao for considering the averment made in the application and decide the matter afresh.

4. The appeal is, therefore, allowed. The impugned order is, hereby set aside and matter is remanded to the E.S.I. Court, South Goa, at Margao for deciding the matter afresh in the light of the observations made hereinabove. It is made clear that the finding recorded by the E.S.I. Court with regard to the number of employees employed by the respondent in the establishment is not disturbed and it is maintained. It is clarified that no oral evidence is required to be led by the parties while considering the aspect as mentioned above.

S.K. SHAH, J.

ssm.